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No. 06-1463

IN THE
Supreme Court of the United States

ARNOLD M. PRESTON,

Petitioner,

v.

ALEX E. FERRER,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

JOINT APPENDIX

Joseph D. Schleimer
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(310) 312-2000

Counsel for Respondent

Petition for Certiorari Filed May 4, 2007
Certiorari Granted September 25, 2007

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Los Angeles Superior Court
Docket Entries

LASC Docket No. BC 342 454
Alex E. Ferrer vs. Arnold M. Preston

11/2/2005	Complaint
11/8/2005	Answer. Filed by Attorney for Defendant [Arnold M. Preston].
11/8/2005	MOTION TO COMPEL ARBITRATION. Filed by Attorney for Defendant.
11/10/2005	MOTION FOR PRELIMINARY INJUNCTION. Filed by Attorney for Plaintiff [Alex E. Ferrer].
11/10/2005	Declaration of Robert M. Dudnik in Support of Notice of Motion for Preliminary Injunction. Filed by Attorney for Plaintiff.
11/22/2005	Memorandum of Points & Authorities in Opposition to Motion to Compel Arbitration. Filed by Attorney for Plaintiff.
11/22/2005	Notice of Errata in Connection with the Declaration of Robert M. Dudnik in Support of Notice of Motion for Preliminary Injunction. Filed by Attorney for Plaintiff.

11/22/2005	Declaration of Robert M. Dudnik in Support of Opposition to Defendant's Motion to Compel Arbitration. Filed by Attorney for Plaintiff.
11/22/2005	Opposition to Ferrer's Motion for Preliminary Injunction. Filed by Attorney for Defendant.
11/30/2005	Reply/Response – Declaration of Robert M. Dudnik in Support of Motion of Alex E. Ferrer for Preliminary Injunction. Filed by Attorney for Plaintiff.
11/30/2005	Reply/Response in Support of Motion to Compel Arbitration. Filed by Attorney for Defendant.
11/30/2005	Reply/Response – Memorandum in Support of Motion of Alex E. Ferrer for Preliminary Injunction. Filed by Attorney for Plaintiff.
12/14/2005	Supplemental Declaration of Robert M. Dudnik in Opposition to Defendant's Motion to Compel Arbitration. Filed by Attorney for Plaintiff.
1/31/2006	Notice of Appeal. Filed by Attorney for Defendant.
2/1/2006	Notice to Attorney re Notice of Appeal. Filed by Clerk.

California Court of Appeal and California Supreme Court Docket Entries

Court of Appeal Docket No. B188997
California Supreme Court Docket No. S149190

Alex E. Ferrer v. Arnold M. Preston
Appeal from Los Angeles Superior Court

2/10/2006	NOTICE OF APPEAL lodged/received. N/A 1.31.06 Arnold M. Preston 5.1 with no indication re: Reporters Transcript
2/17/2006	Civil Case Information Statement Filed
2/28/2006	Proceeding by 5.1 - no reporter's transcript.
3/22/2006	APPELLANT'S APPENDIX and OPENING BRIEF. Attorney: Schleimer, Joseph D.; Party: Preston, Arnold; 1 volume
4/11/2006	Stipulation of extension of time filed to: Attorney: Miller, Kirsten; Party: Ferrer, Alex
6/19/2006	RESPONDENT'S BRIEF. Attorney: Miller, Kirsten. Party: Ferrer, Alex
7/3/2006	Certificate of interested entities or persons filed by Appellant.
7/3/2006	APPELLANTS REPLY BRIEF.

7/3/2006	Case fully briefed.
9/28/2006	Calendar notice sent. Calendar date: 10/24/06 @ 9:00 a.m.
10/24/2006	Cause argued and submitted.
11/30/2006	Opinion filed.
1/3/2007	Service copy of Petition for Review received. Supreme Court Case No. S149190.
1/3/2007	Record transmitted to Supreme Court. 1x4"
2/14/2007	Petition for review denied in Supreme Court.
2/26/2007	Record returned from Supreme Court. 1x4"
3/6/2007	Remittitur issued.
3/6/2007	Case complete.
5/14/2007	Received letter from: US Supreme Court; stating writ of certiorari was filed and placed on docket 5/7/07 as No. 06-1463.

American Arbitration Association
Commercial Arbitration Rules
Demand for Arbitration

MEDIATION is a nonbinding process. The mediator assists the parties in working out a solution that is acceptable to them. If you would like the AAA to contact the other parties to determine whether they wish to mediate this matter, please check this box.
_X_ There is no additional administrative fee for this service.

To: Alex E. Ferrer
Address: 10310 S.W. 103 Terrace, Miami FL 33176
Phone No. 305-274-1248

Name of Representative (if known):
Ronald DiNicola, Esq.
Name of Firm (if applicable):
MS&K
Representative's Address:
11377 W. Olympic Blvd., L.A. CA 90064

The named claimant, a party to an arbitration agreement contained in a written contract dated 3-7-02 providing for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration thereunder.

Is this a dispute between a business and a consumer?
___Yes _x_No

THE NATURE OF THE DISPUTE

Failure to pay management fees. Repudiation of management agreement.

THE CLAIM OR RELIEF SOUGHT
(the Amount, if Any)

Management fees due and declaration fees due on future earnings. Arbitration in Los Angeles, California. Est. $75,000 to $150,000 + Attorney fees

DOES THIS DISPUTE ARISE OUT OF AN EMPLOYMENT RELATIONSHIP?
___ Yes _x_ No

IF THIS DISPUTE ARISES OUT OF AN EMPLOYMENT RELATIONSHIP, WHAT WAS/IS THE EMPLOYEE'S ANNUAL WAGE RANGE?
Note: this question is required by California law.
___ Less than $100,000 ___ $100,000 to $250,000
___ Over $250,000

TYPES OF BUSINESS

Claimant: Manager
Respondent: Private Judge

HEARING LOCALE REQUESTED

You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association at its Fresno office, with a request that it commence administration of the arbitration. Under the rules, you may file an

answering statement within fifteen days after notice from the AAA.

Signature (may be signed by a representative)

/s/ *Joseph D. Schleimer*

Title: Attorney
Date: June 4, 2005

Schleimer & Freundlich LLP
9100 Wilshire Blvd., Ste 615 East
Beverly Hills, CA 90212
Phone: 310-273-9807
Fax: 310-273-9809

NAME OF CLAIMANT: Arnold M. Preston

TO BEGIN PROCEEDINGS, PLEASE SEND TWO COPIES OF THIS DEMAND AND THE ARBITRATION AGREEMENT, WITH THE FILING FEE AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL DEMAND TO THE RESPONDENT.

[ATTACHMENT TO ARBITRATION DEMAND]

FAX COVER LETTER
Best Western Airport Plaza (Reno)

To: *Arnold Preston*
Company: *William Morris Agency*
From: *Alex Ferrer*
Number of Pages: *6*
Date: *3/7/02*
Fax: *310 248 5954*
....
Message: [Handwritten] *ARNIE, HERE IS THE EXECUTED AGREEMENT WITH THE CORRECTIONS WE DISCUSSED.*
/s/ Alex

[Page Break]

PERSONAL MANAGEMENT AGREEMENT

This document, entered into on March 6, 2002, by and between Judge Alex Ferrer (hereinafter referred to as "ARTIST"), located at 10310 S.W. 103rd Avenue, Miami, FL 33176 and Arnold M. Preston (hereinafter referred to as "MANAGER") located at 425 North Oakhurst Drive, Beverly Hills, CA 91210, will confirm our agreement regarding Managers services as Artist's Personal Manager:

1) TERM

Artist hereby engages Manager as their ~~sole and exclusive~~ [stricken by hand] "AF" [initials] Personal Manager, for a period of two (2) years,

commencing on the date set forth above (the "TERM"). Said Term shall renew automatically two (2) times (the "Term Extensions"), with each of the two Term Extensions renewing for a period of two (2) year periods, unless terminated by written notice by either party before thirty (30) days prior to the expiration of the Term or Term Extension(s), if applicable.

2. ENGAGEMENT & MANAGERS SERVICES

Manager agrees to perform services as Artists Personal Manager in the entertainment industry for the purpose of supervising, promoting, guiding, and directing Artists career in the capacity as performer, actor, comedian, voice over artists, entertainer, producer, director, promotional personality, writer and author. Manager will advise and counsel with regard to general practices in the entertainment industry, which include but are not limited to: the fields of media and television, radio, motion pictures, legitimate theatre, Internet, merchandising, endorsements, testimonials, commercials and appearances at hotels, restaurants, clubs, schools, colleges, nightclubs, one-night stands, and all other appearances, activities and interests in any way connected or pertinent to the entertainment industry and related fields. Manager will advise and counsel with respect to such matters of which Manager may have knowledge concerning compensation and privileges extended for similar artistic values, the selection of publicists, agents and other persons who will counsel, advise, seek & procure employment and engagements for Artist.

3) AUTHORIZATIONS

(i) Manager is authorized and empowered by Artist and on Artists behalf and in Managers discretion to do the following: approve and permit any and all publicity and advertising; approve and permit use of Artists name, photograph, likeness, voice, sound effects, literary and artistic materials for purposes of advertising and publicity in the promotion and advertising Artists career. In all cases, whenever possible, Manager will first consult with Artist with regards to the above, and Artist will do their best to supply Manager with "pre-approved" photos. Manager will, with Artists consultation and mutual agreement, engage as well as discharge and/or direct for Artist and in Artists name, agents, attorneys, business mangers, publicists as well as other persons, firms and corporations who may be retained to obtain contracts, engagements, or employment for Artist.

(ii) Manager is authorized by Artist to execute for Artist and in Artists name, any and all agreements, documents, and contracts for Artists services, talents, or artistic literary or

Artists Initials: *AF*

[Page Break]

musical matters, with Artists verbal approval. The authority herein granted Manager is irrevocable during the term hereof.

4) OFFERS OF EMPLOYMENT

Artist shall advise Manager of all offers of employment **[handwritten]** ***Related to Paragraph 6(i) Below*** submitted to Artist, verbally or in writing, and will refer any inquiries concerning Artists services **[handwritten]** ***Related to Paragraph 6(i) Below*** to Manager, in order that Manager may advise whether the same are compatible with Artists career. Manager will also advise Artist of all offers submitted to Manager on Artists' behalf.

5) NON-EXCLUSIVITY & EXCLUDED SERVICES

Artist recognizes that Manager may provide similar services for others and engage in other business activities, and Manager shall have the right to render their services to other persons, firms, or corporations, either in the capacity for which Manager is engaged hereunder or otherwise, including without limitation, services as a Producer, whether or not Artist is involved in the projects Manager produces. Managers' involvement as Producer, Writer, or Director in any project Artist is involved with shall not relieve Artist of their obligation to pay Manager a commission with respect to such project.

6) COMMISSIONS

i) In compensation for Managers services, Artist agrees to pay Manager a Commission on Gross Compensation (as defined below) received by Artist or on Artists' behalf, during or after the Term

[handwritten] ***for a contract entered into, stemming from the meeting attend by Artist on March 8, 2002 in Burbank, CA.*** **[initials]** ***AF***

as well as replacements, substitutes, extensions, modifications, options, and renewals of such contracts, negotiated or entered into during the Term for Artists services inthe entertainment industry. Such Commission shall be paid ~~**as follows**~~ **[stricken by hand] [handwritten]** ***at the rate of 12% of Gross Compensation.*** **[Initials]** ***AF***

[Stricken by hand]
~~**(a) Should Artists' Gross Compensation be equal to or less than US $100,000 in one Calendar Year, Artist shall pay Manager a ten (10%) percent commission (as an example, should Artists Gross Compensation for a Calendar Year equal US $85,000, than Managers total commission for that Calendar Year shall equal US $8500).**~~

~~**(b) Should Artists Gross Compensation be greater than US $100,000 yet equal to or less than US $150,00 in one Calendar Year, Artist shall pay Manager a twelve and one-half (12.5%) percent commission on ALL of such Gross Compensation (as an example, should Artists Gross Compensation for a Calendar Year equal US $125,000, then Managers total commission for that Calendar Year shall equal US $15,625).**~~

~~**(c) Should Artists Gross Compensation be greater than US $150,000 in one Calendar Year,**~~

~~**Artist shall pay Manager a fifteen (15%) percent commission on ALL of such Gross Compensation (as an example, should Artists Gross Compensation for a Calendar Year equal $175,000, than Managers total commission for that Calendar Year shall equal US $26,500).**~~

(ii) If Artists materials or services are furnished by a corporation, and if monies received by such corporation would have been commissionable by Manager had Artist been engaged to furnish such materials and services directly, then Manager shall be obligated to render the same services to such corporation as would have been obligated to enter unto Artist, and Artist

Artists Initials: ***AF***

[Page Break]

agrees that commission received from such corporation shall be in lieu of commission received directly from Artist, at the rate specified herein.

(iii) Manager shall be entitled to compensation with such compensation based on the Commission structure outlined in Paragraph 6(i) ~~**a-c**~~ **[stricken by hand],** with respect to any contract covered by **[Initials]** ***AF*** this agreement, for so long as Artist continues to receive compensation thereto, which Artist may receive as a result of their activities in and throughout the entertainment industry. Managers Commission and applicable percentage shall apply to all Gross Compensation, including but not limited to, stock, right to buy stock, individual

proprietorship, stockholder, partnership, joint venture, or other form of interest, and Manager shall be entitlted to Managers applicable percentage share thereof.

iv) The term Gross Compensation, as used herein, shall mean one hundred percent (100%) of ANY AND ALL monies, properties, and considerations of any kind or character, including without limitation, salaries, earnings, fees, royalties, bonuses, and other compensation received by Artist for all services rendered, which are covered under this Agreement. Other compensation shall be considered to include, but not be limited to:

(a) Artists receipt of stock, interest in, or the right to buy stock or interest in any corporation, as all or part of their compensation for activities thereunder. Should Artist be required to make any payment for such stock or interest, Manager will pay Managers percentage share of such payment, unless Manager does not want Managers percentage share thereof.

(b) Fees received by Artist should Artist become the packager or owner of all or part of an entertainment property, whether as an individual proprietor, stockholder, partner, joint venture or otherwise.

v) Artist understands that Manager is not required to produce any of Artists projects, but in the event Manager does so, Artist may negotiate a reduced or waived commission, on a per-case basis.

vi) Artist agrees to issue instructions to Artists

business manager and/or controller who supervises and maintains Artists books and records, as they pertain to the Gross Compensation and other considerations hereunder, that Manager and business manager and/or controller will work cooperatively in assuring that Manager has been paid, and Manager will receive monthly statements reflecting these payments.

7) CONTINUING COMMISSIONS

If this agreement is with a partnership, the death of a partner shall not affect this agreement in any way. If this agreement is with a corporation or an individual, then, as to Artists Gross Compensation or other considerations earned after Managers death, from engagements, contracts, and agreements commenced and entered into or substantially negotiated prior to Managers death, Managers estate or corporation shall still be entitled to said commissions contained herein, and specified for the duration of all such engagements, contracts and agreements, and any extensions, renewals, and substitutions thereof.

8) EXTENSIONS

Artists Initials: ***AF***

[Page Break]

A contract shall also be deemed covered by this Agreement if it is made within forty five (45) days after the expiration of the term hereof and Artist was submitted or considered for said contract during the

Term of this Agreement.

9) CREDIT

Artist will at all times make their best effort to credit Managers name and/or Managers company's name in any and all newspaper or magazine articles, press and trade announcements, and any other publicity, including live or recorded appearances, interviews, and award ceremonies, as Artists Personal Manager. If Artist has made their best efforts to include such information, and Managers name and/or Managers company name is subsequently omitted from any of the above unintentionally on my part, Manager agrees to hold Artist harmless.

10) RELATIONSHIP OF PARTIES

Manager shall render Managers services hereunder as an independent contractor. Nothing contained in this agreement shall be construed as forming a partnership or joint venture between Manager and Artist. Manager may appoint or engage any and all other persons, firms, and corporations throughout the world, in Manager's discretion, to perform any and all services which manager has agreed to perform hereunder, all under the direction and supervision of Manager, and Manager's expense.

11) ASSIGNMENT

Manager shall have the right to assign this Agreement, or any part of Managers rights hereunder, to any person, corporation, partnership,

etc., that Cat Josell and/or Josell Management, is a majority stockholder, general partner or employee of, during the Term(s) of this Agreement. However, Manager shall continue to be Artists primary Manager, unless Artist and Manager otherwise agree.

12) NOTICE

Manager shall not be deemed in breach or default under this agreement unless Artist gives Manager written notice of such breach or default and Manager fails to cure such breach or default within thirty (30) days after receipt of notice via certified mail, which shall describe the exact breach. Artist shall not be deemed in breach or default under this agreement unless Manager gives Artist written notice of such breach or default and Artist fails to cure such breach or default within thirty (30) days after receipt of notice via certified mail, which shall describe the exact breach. This agreement shall be governed by the laws of the state of California, applicable to agreements wholly entered into and performed herein.

Artists Initials: ***AF***

[Page Break]

13) ARBITRATION

In the event of any action, suit, or proceeding arising from or based upon this Agreement brought by either party hereto against each other, the prevailing party shall be entitled to recover from the other attorneys

fees in connection therewith in addition to the costs of such action, suit, or proceeding. In the event of any dispute under or relating to the terms of this agreement, or the breach, validity, or legality thereof, it is agreed that the same shall be submitted to arbitration to the American Arbitration Association in the city of Los Angeles, California, and in accordance with the rules promulgated by the said association, and judgment upon the award rendered by the arbitrator(s), may be entered into any court having jurisdiction thereof. Nothing in this agreement shall be construed as to require any act contrary to any law or regulation of any guild or union. If there is any conflict between this agreement and any present or future law, the latter shall prevail, but in such an event, the provisions of such agreement so affected shall be curtailed only to the extent necessary to bring it within the requirements of said law, rule, or regulation.

14) ENTIRE AGREEMENT

This document constitutes the entire agreement between us, and supercedes any other oral or written agreements between us, which we may have entered into in regards to the contents herein. Should any provision of this agreement be invalid, illegal or unenforceable, the remainder of this agreement shall remain in full force and effect. This agreement may not be cancelled, altered, or amended, except in writing signed by both parties.

15) PARAGRAPH NUMBERS AND HEADINGS

Paragraph Numbers and Headings are for the convenience of the Parties only, and shall have no operative effect.

Artists Initials: *AF*

[Page Break]

SIGNATURE PAGE

A faxed copy of this Agreement is as binding as an original.

If the foregoing meets with your approval, please indicate your acceptance and agreement by signing in the space provided below and initializing the bottom of each page.

Artist: */s/ Alex Ferrer*

Address: 10310 SW 103 Terrace

MIAMI, FL 33176

Phone: (305) 274-1248 (H) (305) 975-0579 (cell)

Agreed to and Countersigned by:

/s/ Arnold Preston
425 N. Oakhurst Dr
Beverly Hills, CA 91210
310-344-0725

Artists Initials: *AF*

BEFORE THE LABOR COMMISSIONER

OF THE STATE OF CALIFORNIA

ALEX E. FERRER, an individual,	)	
	)	
	)	PETITION TO DETERMI
Petitioner,	)	CONTROVERSY
	)	
v.	)	(Labor Code Section 1700.4
	)	
ARNOLD M. PRESTON, an individual,	)	
	)	
Respondent	)	
	)	

Petitioner Alex E. Ferrer ("Ferrer") alleges as follows:

1. This Petition is filed pursuant to the authority of Section 1700.44 of the Labor Code of the State of California.

2. Ferrer is informed and believes and, on that basis, alleges that at all times mentioned herein Respondent Arnold M. Preston ("Preston"), was and is now residing within the County of Los Angeles, in the State of California. Additionally, Ferrer is informed and believes and, on that basis, alleges that Preston was and is doing business in the County of Los Angeles, in the State of California.

3. Ferrer is informed and believes and, on that basis, alleges that at all times material herein

respondent Preston acted, and held himself out to others as, a talent agent although he was not licensed as a talent agent as required under California Labor Code Section 1700 *et. seq.* (the "Talent Agencies Act"). See, CAL. LAB. CODE §1700.5

4. Ferrer at all times material herein was and is a resident of the State of Florida. He is a respected former Florida state court judge. In or about 2001 and 2002, Ferrer was exploring opportunities in the television and motion picture industry to act in the role of a judge on a court television show. Ferrer had no prior experience in the entertainment industry, was not represented by counsel, and was unaware of the licensing requirements of the California Labor Commissioner regarding talent agents.

5. In early 2002, Ferrer contacted Preston at the suggestion of a friend and sent Preston his tape and biography. At the time, Ferrer believed Preston was a talent agent working at the William Morris Agency ("WMA") and that Preston could procure work for him. Preston was, in fact, an assistant at the WMA and was not a licensed talent agent.

6. Preston, thereafter, engaged in "procuring, offering, promising, or attempting to procure employment" for Ferrer. He held himself out to Ferrer and others as a licensed talent agent when, in fact, he was not. For example, in March, 2002, Preston contacted Ferrer regarding a meeting at Buena Vista Television with television executives and producers to discuss a role for Ferrer as a judge on a

court television show ("Buena Vista Meeting"). On or about March 7, 2002, shortly before the scheduled Buena Vista Meeting, Preston presented Ferrer with an agreement ("Agreement"), attached hereto and marked as Exhibit "A". Preston told Ferrer that Ferrer must sign the Agreement, or Preston would not finalize arrangements for this and/or other meetings.

7. Under the terms of the Agreement, Preston was to receive in exchange for "management services" rendered by Preston, twelve percent (12%) of gross compensation paid to Ferrer. Thereafter, pursuant to the Agreement, Preston engaged in procuring, offering to procure, promising to procure, and attempting to procure employment for Ferrer as an actor in the entertainment industry.

8. In late 2004, Ferrer was hired in the role of a judge for a FOX Television series ("FOX Series"), set to air on FOX in the fall of 2005. Preston did not participate in the negotiations in connection with the FOX series.

9. On June 10, 2005, Preston filed a demand for Arbitration before the American Arbitration Association, pursuant to an arbitration provision in the Agreement, demanding "management fees" of $75,000 – $150,000. Preston alleges he is entitled to a commission on Ferrer's compensation on the FOX series pursuant to the Agreement because, according to Preston, it "stems" from the Buena Vista Meeting.

10. In arranging the Buena Vista Meeting, and otherwise procuring, promising to procure, and attempting to procure employment for Ferrer, Preston acted as an unlicensed talent agent in violation of the Talent Agencies Act and, therefore, his claim for compensation under the Agreement fails as a matter of law. *See* CAL. LAB. CODE §§ 1700.4, 1700.5, *Styne v. Stevens*, 26 Cal.4th 42, 50-51 (2001).

11. As a result of the foregoing, an actual and justiciable controversy has arisen between Ferrer and Preston. Ferrer seeks a determination:

(a) That Preston is not entitled to retain or receive any commissions from Ferrer based on the Agreement which is void under the Talent Agencies Act. *See* CAL. LAB. CODE §1700, *et. seq.*; and

(b) Staying the Arbitration Proceedings in Case No. 720140 000591 05 RWH pending before the American Arbitration Association; and

(c) Awarding Ferrer reasonable attorneys fees and costs; and

(d) For such other relief as the Commissioner deems just and proper.

Dated: July 5, 2005

MITCHELL SILBERBERG & KNUPP LLP
RONALD A. DINICOLA

By: */s/ Ronald A. DiNicola*
Ronald A. DiNicola
Attorney for Petitioner
Alex E. Ferrer

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Arnold M. Preston

–vs.–

Alex E. Ferrer

CASE NUMBER 72 140 00591 05 RWH

REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER #1

On September 29, 2005, the Motion by Respondent Alex E. Ferrer ("Respondent") to stay Arbitration Proceedings came on for hearing before the Arbitrator. Specially appearing to argue the Motion was Ronald A. DiNicola of Mitchell Silberberg & Knupp, LLP on behalf of Respondent and appearing in opposition to the Motion was Joseph D. Schleimer of Schleimer & Freundlich, LLP for Petitioner Arnold M. Preston ("Petitioner").

With due consideration to all points, authorities and argument, the Motion is denied. Applicable authority cited by both parties acknowledges that "the Talent Agencies Act specifically allows parties to provide in their contract that disputes thereunder shall be resolved by private arbitration, rather than by the Commissioner. (1700.45)." Styne v. Stevenson, 26 Cal.4th 42, 58, fn.

9 (2001). Furthermore, the Motion was predicated upon a favorable resolution of disputed questions of fact which cannot be determined at this time without evidence or hearing.

The AAA Administrator shall be requested to submit calendars for the prompt scheduling of the prehearing conference in this matter.

Dated: October 12, 2005

/s/ Philip W. Boesch, Jr.
PHILLIP W. BOESCH, JR.
Arbitrator

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALEX E. FERRER,	)	Case No. BC 342454
	)	
Plaintiff	)	COMPLAINT FOR
v.	)	DECLARATORY
	)	RELIEF AND
ARNOLD M. PRESTON,	)	PRELIMINARY
	)	AND PERMANENT
Defendant	)	INJUNCTIONS
	)	

For his complaint herein, Plaintiff alleges as follows:

1. Defendant is an individual residing in the County of Los Angeles, State of California.

2. On or about March 6, 2002, Plaintiff and Defendant entered into a written contract in the County of Los Angeles, State of California entitled "Personal Management Agreement" (the "Contract").

3. Pursuant to the Contract, Defendant claims to have procured employment for Plaintiff in the entertainment industry and further claims that, pursuant to the Contract, he is owed certain commissions based on revenues received and to be received by Plaintiff resulting from such employment.

4. On or about June 4, 2005, Defendant instituted an arbitration proceeding with the

American Arbitration Association in pursuit of his claim for said commissions, taking the position that an arbitration provision in the Contract vests authority in an arbitrator to decide all disputes and differences between Plaintiff and Defendant arising from or related to the Contract, including the disputed issue of whether the Contract is void.

5. Plaintiff disputes Defendant's contention that said arbitration provision authorizes an arbitrator to decide all such disputes and differences. In particular, Plaintiff contends that (a) the Contract is void by reason of Defendant's attempt to procure employment for Plaintiff in violation of the California Labor Code §§ 1700.00 – 1700.47 (commonly referred to as "the Talent Agencies Act"), (b) the Contract's arbitration clause does not vest authority in an arbitrator to determine whether the contract is void, and (c) the Labor Commissioner of the State of California has exclusive authority not only to decide that issue, but also to decide the issue of his/her jurisdiction to decide that issue.

6. Based upon his above-described contention, Plaintiff has filed a Petition to Determine Controversy with the Labor Commissioner, which is still pending, and a Motion to Stay Arbitration Proceedings Pending Disposition of Petition to Determine Controversy Before Labor Commissioner, which motion was denied on or about October 12, 2005.

7. By reason of the denial of said motion to stay arbitration proceedings, the arbitrator in the

arbitration instituted by Defendant intends to proceed with the arbitration and, unless enjoined and restrained, preliminarily and permanently, Defendant will proceed with and participate in such arbitration.

First Cause of Action

8. Plaintiff incorporates by reference paragraph Nos. 1-7, inclusive, set forth above as though set forth in full.

9. An actual and justiciable controversy has arisen and exists between Plaintiff and Defendant in that Defendant contends that the issue of whether the Contract is void is within the jurisdiction of the arbitrator, and Plaintiff contends that that issue is within the exclusive jurisdiction of the California Labor Commissioner, notwithstanding the Contract's arbitration provision and California Labor Code §1700.45.

Second Cause of Action

10. Plaintiff incorporates by reference paragraph Nos.1–9, inclusive, set forth above as though set forth in full.

11. Unless Defendant is preliminarily and permanently enjoined from proceeding with and/or participating in the pending arbitration unless and until, if ever, the Labor Commissioner rules that he/she does not have jurisdiction over the parties' disputes, Plaintiff will likely suffer great and

irreparable injury, and Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. That the court determine and declare that the existing controversy between Plaintiff and Defendant arising from the Contract, including in particular the issue of the validity of the Contract, is not subject to arbitration;

2. For a preliminary injunction and a permanent injunction enjoining and restraining Defendant from proceeding with the arbitration currently pending before the American Arbitration Association as: Preston v. Ferrer, Case No. 720140 00591 05 RWH unless and until, if ever, the Labor Commissioner determines that he/she has no jurisdiction over the parties' dispute.

3. For costs of suit incurred herein;

4. For attorneys' fees, to the extent permitted by law; and

5. For such other and further relief as the court may deem just and proper.

Dated: November 2, 2005

MITCHELL SILBERBERG
& KNUPP LLP
RONALD A. DiNICOLA
ROBERT M. DUDNIK
KIRSTEN MILLER

BY: */s/ Robert M. Dudnik*
Robert M. Dudnik,
Attorneys for Plaintiff,
Alex E. Ferrer

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Arnold M. Preston

–vs–

Alex E. Ferrer

CASE NUMBER 72 140 00591 05 RWH

REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER #2

On November 3, 2005, a Preliminary Hearing Conference came on for hearing before the Arbitrator. Specially appearing, subject to continuing objection to jurisdiction, was Ronald A. DiNicola of Mitchell, Silberberg & Knupp, LLP on behalf of Respondent Alex E. Ferrer ("Respondent"). Appearing for Petitioner Arnold M. Preston ("Petitioner") was Joseph D. Schleimer of Schleimer & Freundlich, LLP.

By agreement of the parties and order of the Arbitrator, the following is now in effect:

1. Hearings in this matter are set for January 26 and 27, 2006 at the offices of the American Arbitration Association in Los Angeles, California.

2. On or before December 21, 2005, either

party may serve upon the other a Request for Production of Documents.

3. On or before January 18, 2006, the party upon whom such a Request is served shall serve a Response, and produce all responsive documents and/or specify any objections with particularity.

4. On or before January 18, 2006, each party shall serve a witness list, identifying all witnesses that either side anticipates calling at the hearing of this matter.

5. The parties confirm that they have stipulated to the Accelerated Exchange Program of the American Arbitration Association.

Dated: November 3, 2005

/s/ Philip W. Boesch, Jr.
PHILLIP W. BOESCH, JR.
Arbitrator

BEFORE THE LABOR COMMISSIONER
OF THE STATE OF CALIFORNIA

ALEX E. FERRER,	**CASE NO. TAC 28-05**
Petitioner,	
vs.	
ARNOLD M. PRESTON	
Respondent	

ORDER ON PETITIONER'S MOTION TO STAY ARBITRATION PROCEEDINGS PENDING DISPOSITION OF PETITION TO DETERMINE CONTROVERSY BEFORE CALIFORNIA LABOR COMMISSIONER

Petitioner's motion to stay arbitration proceedings pending disposition of petition to determine controversy before California Labor Commissioner is denied on the grounds that the Labor Commissioner does not have the authority to stay arbitration proceedings. Such a motion must be made directly to the arbitrator or to the superior court.

ORDER ON RESPONDENT'S COUNTER-MOTION TO DISMISS CASE FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

Respondent's counter-motion to dismiss for

lack of subject matter jurisdiction and failure to state a claim is denied. "When the Talent Agencies Act is invoked in the course of a contract dispute, the Commissioner has exclusive jurisdiction to determine his jurisdiction over the matter, including whether the contract involved the services of a talent agency." *Styne v. Stevens*, 26 Cal.4th 42, 54. Petitioner raises the Talent Agency Act in defense to Respondent's demand for Arbitration demanding "management fees" pursuant to a contract entered into between the parties. Accordingly, this case presents a colorable basis for exercise of the Labor Commissioner's jurisdiction and therefore, the matter must be submitted to the Labor Commissioner for determination. *Id.* at 60.

NOTICE OF HEARING

PLEASE TAKE NOTICE that the above-captioned matter has been scheduled for a hearing before the undersigned attorney for the Labor Commissioner on Monday, March 6, 2006, at 10:00 a.m., at 320 W. 4th Street, Suite 430, Los Angeles, Ca. 90013.

At this hearing, the parties will be permitted to testify, present evidence, and question witnesses. The Labor Commissioner's determination of this controversy will be based upon the evidence and testimony presented at this hearing.

Dated: 11/8/05

/s/ Edna Garcia Earley
EDNA GARCIA EARLEY,
Attorney for the Labor Commissioner

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Arnold M. Preston

–vs–

Alex E. Ferrer

CASE NUMBER 72 140 00591 05 RWH

DECISION ON MOTION AND ORDER NO. 2

On November 9, 2005, Respondent Alex E. Ferrer ("Respondent"), specially appearing, made a Motion for Reconsideration ("the Motion") of the Arbitrator's Order denying Respondent's Motion to Stay Arbitration Proceedings pending disposition of the matter before the Labor Commissioner. Petitioner Arnold M. Preston ("Petitioner") filed an Opposition to the Motion ("the Opposition").

The Motion is based on all previous filings in this Arbitration and upon an Order on Petitioner's Motion to Stay Arbitration Proceedings Pending Disposition of Petition to Determine Controversy Before the California Labor Commissioner; Order on Respondent's Counter-Motion to Dismiss Case for Lack Subject Matter Jurisdiction and Failure to State a Claim, in Case No. TAC 28-05 before the Labor Commissioner of the State of California, which Order was signed by Edna Garcia Earley, Attorney for the

Labor Commissioner, on November 8, 2005 ("the Labor Commissioner Order"). The Labor Commissioner Order in pertinent part cites the case of Styne v. Stevens, 26 Cal.4th 42, 54 (2001), and then concludes that because the dispute between Petitioner and Respondent presents a "colorable basis for exercise of the Labor Commissioner's jurisdiction," the dispute must be submitted to the Labor Commissioner for determination.

After consideration of the Motion and Opposition, and for good cause shown, it is hereby ordered:

1. The Motion is granted and Arbitration is stayed pending disposition of the matter before the Labor Commissioner, or pending further order of the Arbitrator.

2. In Styne v. Stevens, which both parties and apparently counsel for the Labor Commissioner recognize as applicable authority, the Supreme Court observed in dicta:

> Amici curiae additionally argue that arbitration will be undermined by a requirement that artist's Talent Agencies Act defenses (particularly defensive claims that an alleged contract is void under the Act) must be referred to the Commissioner. But this assertion does not appear directed at the issue of defenses in particular. The contention raised by amici curiae, if valid at all, applies equally whether the artist seeks affirmative relief

> under the Act, or raises the Act only for defensive purposes. Moreover, the Talent Agencies Act specifically allows parties to provide in their contract that disputes thereunder shall be resolved by private arbitration, rather than by the Commissioner. (§1700.45). Nothing in our reasoning restricts this right.

26 Cal.4th at 54

In Styne v. Stevens, when the California Supreme Court recognized that two parties may provide for private arbitration of their disputes, the Supreme Court confirmed that parties could contract to arbitrate their disputes even when the disputes would otherwise fall within the jurisdiction of the Labor Commissioner.

3. The two parties to this Arbitration are the same parties to the Labor Commissioner matter; and these two parties, Arnold M. Preston and Alex E. Ferrer, executed a contract with an arbitration clause which states as follows:

> **13) ARBITRATION**
>
> In the event of any action, suit, or proceeding arising from or based upon this Agreement brought by either party hereto against each other, the prevailing party shall be entitled to recover from the other attorney's fees in connection therewith in addition to the costs of such action, suit, or proceeding. In the event of

any dispute under or relating to the terms of this agreement, or the breach, validity, or legality thereof, it is agreed that the same shall be submitted to arbitration to the American Arbitration Association in the city of Los Angeles, California, and in accordance with the rules promulgated by the said association, and judgment upon the award rendered by the arbitrator(s), may be entered into any court having jurisdiction thereof. Nothing in this agreement shall be construed as to require any act contrary to any law or regulation of any guild or union. If there is any conflict between this agreement and any present or future law, the latter shall prevail, but in such an event, the provisions of such agreement so affected shall be curtailed only to the extent necessary to bring it within the requirements of said law, rule, or regulation." (Emphasis added)

4. Rule 43 of the American Arbitration Association ("AAA") states that: "(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties including, but not limited to, specific performance of a contract." In denying Respondent's previous motion to stay arbitration proceedings, the Arbitrator entered Order No. 2 in part because evidence, factual findings and further briefing could inform the Arbitrator as to the meaning and application of the Arbitration Clause, the meaning and applicability of the Talent Agencies Act to the facts of the case, and the remedy or relief that would be just and equitable and within the scope

of the agreement.

5. Even though evidence and factual findings still could inform the Arbitrator as to such matters, the Arbitrator has nonetheless granted the Motion for reconsideration (i) in the interest of the AAA Rules which also promote the cost effective resolution of disputes, because it is not cost effective to have parallel proceedings simultaneously pending, and (ii) because the results of the Labor Commissioner hearing also could inform the Arbitrator as to the remedy or relief that would be just and equitable under the circumstances of this case.

Dated: December 6, 2005

/s/ Philip W. Boesch
PHILLIP W. BOESCH, JR.
Arbitrator

BEFORE THE LABOR COMMISSIONER

FOR THE STATE OF CALIFORNIA

ALEX E. FERRER,	) Case No. TAC 28-05
	)
	) **STIPULATION TO**
Petitioner,	) **REQUEST STAY**
	) **OF LABOR**
vs.	) **COMMISSIONER**
	) **PROCEEDINGS UNTIL**
	) **RESOLUTION OF**
ARNOLD M. PRESTON,	) **APPEAL TO THE**
	) **CALIFORNIA COURT**
	) **OF APPEAL ON**
Respondent.	) **ARBITRABILITY**
	) **ISSUE**
	)
_____	)**–and–**
	[PROPOSED] ORDER STAYING PROCEEDING

TO THE LABOR COMMISSIONER OF CALIFORNIA:

The parties hereto stipulate as follows:

WHEREAS, Respondent Arnold M. Preston has filed an appeal to the California Court of Appeal, pursuant to C.C.P. §§904.1 and 1294(a), from the Order of the Los Angeles Superior Court denying

Respondent's motion to compel arbitration and the related injunction staying arbitration. A copy of the Notice of Appeal is attached hereto; and

WHEREAS, there is a hearing on the merits in this action set for March 6, 2006; and

WHEREAS, the parties agree that the issue of arbitrability of the Talent Agencies Act issues presented by the Petition herein should be finally decided by the California Courts before the administrative hearing in this matter, in the interest of judicial economy;

THEREFORE, the parties hereto stipulate to respectfully request a stay of the proceedings in this administrative action until such time as the appeal is resolved.

Respectfully submitted,
Dated: February 8, 2006

Mitchell, Silberberg & Knupp

BY: */s/ Ronald A. DiNicola*
Ronald A. DiNicola, Attorneys
for Petitioner Alex E. Ferrer

Dated: February 14,2006

Schleimer & Freundlich LLP

By: */s/ Joseph D. Schleimer*
Joseph D. Schleimer, Attorneys for
Respondent Arnold M. Preston

[Proposed] ORDER

It is so ORDERED. This proceeding is stayed until the pending appeal is resolved and the hearing set for March 6, 2006 is OFF CALENDAR.

Dated: *February 15, 2006*

LABOR COMMISSIONER OF CALIFORNIA

BY: */s/ Edna Garcia Earley*
Edna Garcia Earley, Hearing Officer